

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,
Plaintiff/Respondent,

v.

MICHAEL BOLDS,
Defendant/Petitioner.

Case No. C07-5619RBL
CR06-5473RBL

ORDER

THIS MATTER comes on before the above-entitled Court upon Defendant/Petitioner's Motion for Appointment of Counsel. [Dkt. #9, C07-5619RBL]. Having considered the entirety of the records and file herein, the Court finds and rules as follows:

On or about November 1, 2007 Bolds filed a motion under Fed. R. Civ. P. 60(b)(3) challenging his conviction. This Court entered an Order directing the government to file an answer and Bolds challenged the Order complaining that the Court had recharacterized his motion as one pursuant to 28 U.S.C. §2255. In a subsequent Order the Court explained to the defendant that the Court had not recharacterized his motion and that if after the government's answer the Court determined the motion was more properly considered as a motion under 28 U.S.C. §2255 then the defendant would be provided the opportunity to withdraw his motion.

A review of the defendant's motion and the government's answer demonstrates that the motion is more properly characterized as a motion pursuant to 28 U.S.C. §2255. Defendant's claim that his counsel failed to move to suppress the allegations of his former girlfriend thus rendering ineffective assistance of counsel are

1 claims which allege that “the sentence was imposed in violation of the Constitution or laws of the United States
2” 28 U.S.C. §2255. Therefore, defendant is hereby notified that the Court intends to recharacterize the
3 motion as one pursuant to 28 U.S.C. §2255. The defendant is hereby warned that any subsequent §2255
4 motion will be subject to the restrictions on second or subsequent motions. The defendant may withdraw the
5 motion or may file an amended motion raising all his potential claims under §2255 within 45 days of entry of
6 this Order. *Castro v. United States*, 540 U.S. 375, 383 (2003).

7 The Court **GRANTS** defendant’s motion for appointment of counsel and hereby appoints Zenon P.
8 Olbertz, Esq., as CJA counsel for purposes of this §2255 motion. This appointment is effective January 11,
9 2008, the date Mr. Olbertz was appointed to represent the defendant in his resentencing under the “crack
10 cocaine” amendments to the sentencing guidelines.

11 **IT IS SO ORDERED.**

12 The Clerk shall send uncertified copies of this order to all counsel of record, and to any party appearing
13 pro se.

14 Dated this 25th day of March, 2008.

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17 RONALD B. LEIGHTON
18 UNITED STATES DISTRICT JUDGE
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